

**M e m o r a n d u m****435.0760**

To: Mr. X----- (RGS)

Date: February 26, 1952

From: E. H. Stetson (WWM)

Subject: X-----

As we understand the factual situation, a niche is the name given to the space provided a customer for which he pays to place a container holding cremated remains. Until a niche is "purchased" it is covered by a bronze door or door frame which is affixed thereto by hinges. The center panel of the door or door frame is a sheet of bronze plate affixed to the door frame by screws. The niches are a permanent part of the building, as are the doors and bronze panels, all of which having been apparently included in the general contract covering the erection of the building. When a niche is "purchased", the ashes of the deceased person are placed in the niche, and the door or merely the bronze panel of the door is removed and sent to the firm doing the engraving. This is the initial engraving of the panel. The person's name and in most cases the date of his birth and death are engraved on the panel which is return to the cemetery. The cemetery apparently reinstalls the door or panel on the niche.

The question involved, as we understand it, is whether the tax should apply to the charge made by the engraver to the cemetery, or whether the charge for engraving thereafter passed on to the "purchaser" of the niche is the proper measure of the tax.

It is our opinion that the charge the engraver makes to the cemetery for the engraving of the bronze panel should be regarded as a taxable processing charge for a consumer pursuant to Section 6006(c) of the California Sales and Use Tax Law and Sales and Use Tax Ruling 15.

We believe that the panel is not actually resold to the "purchaser", that he merely acquires a perpetual right to use realty belonging to the cemetery. Accordingly, it is our opinion that the engraving charge "passed on" by the cemetery to the "purchaser" should not be taxable in that the actual consumer is the cemetery. It is also our opinion that the tax should apply to the first engraving because the panel should be regarded as essentially new when the engraving takes place. That is, before the engraving, the panel has not essentially been used. It is when it is first engraved that its usefulness is apparent. Accordingly, we believe that the rule that the tax does not apply to the engraving of used articles is inapplicable.

WWM:ja